IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NOVACARE, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
RETIREMENT CARE ASSOCIATES, INC.	:	
	:	
	:	
and	:	
	:	
CAPITAL CARE MANAGEMENT COMPANY, INC.	:	NO. 97-1211

MEMORANDUM

Giles, J. October , 1997

NovaCare, Inc. ("NovaCare") brings actions for breach of contract (Counts I & II), unjust enrichment (Count III), and conversion (Count IV) against Retirement Care Associates, Inc. ("RCA") and Capital Care Management Company, Inc. ("Capital"). Before the court is defendants' motion to dismiss or transfer for lack of personal jurisdiction. For the reasons which follow, defendants' motion is granted, in part, and denied, in part.

FACTUAL BACKGROUND

In 1993, NovaCare, a Pennsylvania corporation with its principal place of business in this Commonwealth, entered into eight written agreements with Capital, a wholly owned subsidiary of RCA. (Plaintiff's Brief at 4). Under the agreements, NovaCare provided therapy services to eight different nursing care facilities operated by RCA and/or Capital in

Florida. Id. The agreements specified that all notices were to be sent to NovaCare's Pennsylvania office, and that Pennsylvania law would control interpretation of the agreements. (Plaintiff's Brief, Ex. A.)

In September 1994, NovaCare, RCA and Capital reached a settlement regarding payments outstanding under these agreements, and Capital executed a promissory note to NovaCare for $500,000.00. (Plaintiff's Brief at 4). NovaCare apparently thought that the settlement would end all possible relationships with RCA and Capital.

On April 1, 1995, NovaCare entered into certain agreements ("Beverly-NovaCare agreements") with Beverly Enterprises, Inc., d/b/a Westwood Health Care Center ("Beverly"), a Florida corporation. Under the Beverly-NovaCare agreements, NovaCare provided therapy services to patients at Beverly's Westwood Health Care Facility in Fort Walton Beach, Florida. (Compl. at ¶ 9). The agreements specified that the terms thereof were to be construed under Florida law, and that all notices and communications to NovaCare were to be addressed to its Tampa, Florida office. (Plaintiff's Brief, Ex. D.)

In December 1995, Encore Retirement Partners, LP ("Encore") acquired the Westwood Health Facility from Beverly, but engaged Capital to manage the facility. (Defendant's Brief at 1-2). NovaCare continued to provide therapy services to the Westwood Health Facility until August 1996, when it terminated its agreements because Capital, RCA, and Encore failed to make payments for services rendered. (Compl. at ¶¶ 14-16).

In February 1997, NovaCare filed suit against RCA and Capital, to collect monies due under the Beverly-NovaCare agreements. Pursuant to Federal Rule of Civil Procedure 12(b)(2) and 28 U.S.C. §§ 1404 and 1406, defendants have moved to dismiss for lack of personal

jurisdiction or, in the alternative, for the transfer of plaintiff's complaint to the United States District Court for the Northern District of Florida. For the reasons which follow, the court concludes that it lacks in personam jurisdiction and grants the motion to transfer.

ANALYSIS

RCA and Capital claim that they do not maintain a physical presence in, or business contact with, Pennsylvania. (Defendants' Brief, Ex. A at 3-4). They contend that the appropriate forum is the Northern District of Florida because recovery is sought for services rendered in Florida, and because the agreements at issue were executed in Florida and specify that payments shall be sent to the plaintiff's Florida address. (Defendants' Brief at 2).

NovaCare counters that because defendants mailed some checks to NovaCare's Pennsylvania office and spoke by telephone with NovaCare's representatives in Pennsylvania sufficient contacts were had with Pennsylvania to confer in personam jurisdiction. (Plaintiff's Brief at 14). Furthermore, NovaCare submits that since RCA and Capital had in the past entered into similar agreements, they knew that they were assuming a contractual relationship with a Pennsylvania corporation, and that such past conduct should be considered as sufficient minimum contacts in the present case. (Plaintiff's Brief at 13-14).

For a court to exercise personal jurisdiction over a non-resident defendant, it must find that the defendant has purposefully established minimum contacts with the forum state so that "the suit does not offend 'traditional notions of fair play and substantial justice.' " International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). A defendant's conduct and connection with the forum state should

therefore be such that "he should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). Thus, a court must first inquire as to whether "the quality and nature of the defendant's activity is such that it is reasonable and fair to require [that it] conduct [its] defense in that state." Kulko v. Superior Court of California, 438 U.S. 84, 92 (1978) (quoting International Shoe, 436 U.S. at 316-17).

When a defendant raises a jurisdictional defense, "the plaintiff bears the burden of demonstrating contacts with the forum state sufficient to give the court personal jurisdiction." Compagnie Des Bauxites de Guinee v. L'Union Atlantique S.A. d' Assurances, 723 F.2d 357, 362 (3d Cir. 1983). "In general, a plaintiff must shoulder the burden of alleging facts sufficient to support a finding of jurisdiction and of supporting such allegations with appropriate affidavits or documents if jurisdiction is challenged." Strick Corp. v. A.J.F. Warehouse Distributors, Inc., 532 F. Supp. 951, 953 (E.D. Pa. 1982).

A plaintiff may demonstrate sufficient contacts between a nonresident defendant and the forum state so that the state may acquire jurisdiction over a person through two means. The plaintiff may either demonstrate that the defendant has "continuous and systematic" contact with the forum state ("general jurisdiction"), or it may show that the particular cause of action arose from the defendant's activities within the forum state ("specific jurisdiction"). Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 nn.8-9 (1984).

Here, defendants do not carry on a "continuous and systematic part of [their] general business" within Pennsylvania, as required to assert general jurisdiction under this Commonwealth's long-arm statute. See 42 Pa.C.S.A. § 5301(a)(2)(iii). RCA is a Colorado corporation with a principal place of business in Atlanta, Georgia, while Capital is a Georgia

corporation with a principal place of business in Atlanta, Georgia. Neither company maintains offices, owns property nor maintains any physical presence in Pennsylvania. (Tucker Aff. at ¶¶ 13-22). Furthermore, plaintiff does not assert that this court can exercise general jurisdiction over the defendants. (Plaintiff's Brief at 7 n.3). Since it appears that defendants do not possess a jurisdictional-worthy presence in Pennsylvania, this court will address the issue of whether jurisdiction may be exercised based on specific jurisdiction.

For a court to exercise specific jurisdiction over a defendant it must have determined that "there are enough contacts with the forum arising out of the transaction in order to justify assertion of jurisdiction over the out-of-state defendant." Reliance Steel Prod. Co. V. Watson, Ess, Marshall & Enggas, 675 F.2d 587, 588 (3d Cir. 1982). Plaintiff points to the previous agreements that it had with RCA and Capital as evidence of such contacts. (See Plaintiff's Brief, Ex. A). However, there is no evidence which demonstrates that the April 1, 1995, Beverly-NovaCare agreements, were in any way related to past business contacts between the plaintiff and defendants. In fact, the Beverly-NovaCare agreements contained integration clauses that declared that the agreements superseded all prior agreements between the parties. (See Plaintiff's Brief, Ex. D at 2). Furthermore, RCA and Capital were not signatories to the presently disputed Beverly-NovaCare agreements but only assumed such obligations upon the acquisition of the Westwood Facility from Beverly. Thus, the prior dealings between NovaCare, RCA, and Capital cannot be viewed as arising from the transaction at issue. Therefore, the prior business dealings between RCA, Capital and plaintiff do not relate to the transaction at issue, and cannot be viewed as sufficient contact to exercise specific jurisdiction. See Romann v. Geissenberger Mfg. Corp., 865 F. Supp. 255, 263 (E.D. Pa. 1994) ("The Pennsylvania long-arm

statute makes it clear that the contract upon which a plaintiff relies must relate to the cause of action.").

Plaintiff correctly asserts that the actions of the predecessor corporation may be viewed in determining whether the defending successor corporation possesses minimum contacts with the forum. Bowers v. Neti Technologies, Inc., 690 F. Supp. 349, 360 (E.D. Pa. 1988). Here, however, Beverly, as a California corporation, did not have any other contact with Pennsylvania beyond the disputed agreements.

Although defendants assumed the obligation of the Beverly-NovaCare agreements, such contact with the Commonwealth, alone, is insufficient to establish minimum contacts. Romann v. Geissenberger Mfg. Corp., 865 F. Supp. 255, 263 (E.D. Pa. 1994); Cloverbrook C & D, Inc. V. William Graulich & Associates, 664 F. Supp. 960, 961 (E.D. Pa. 1987). See also Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985). Aside from the existence of the contractual agreement, the only other contact that defendants had with Pennsylvania involves the mailing of some checks. Such action by itself is insufficient for a Pennsylvania court to assert jurisdiction. See Time Share Vacation Club v. Atlantic Resorts, Inc., 735 F.2d 61, 66 n.7 (3d Cir. 1984); Hab Air, Inc. v. Butler Aviation Corp., No. 91-CV5941, 1992 WL 10497 at *3 (E.D. Pa. Jan. 21, 1992); Rodale Press, Inc. v. Submatic Irrigation Sys., 651 F. Supp. 208, 211 (E.D. Pa. 1986).

When viewing a contractual relationship as a means of asserting personal jurisdiction, Pennsylvania courts will look to certain factors, such as the character of the precontractual negotiations, the location of those negotiations, the terms of the agreement and the type of items being contracted. Strick Corp. V. A.J.F. Warehouse Distributors, Inc., 532 F. Supp.

951, 956 (E.D. Pa. 1982). See Devault of Del., Inc v. Omaha Pub. Power Dist., 633 F. Supp. 374, 376-77 (E.D. Pa. 1986) (Factors which should be considered when determining minimum contacts via contract are "the prior negotiations leading to the contract, contemplated future consequences, the terms of the contract and the parties' actual course of dealings.").

Evaluating these factors in the Beverly-NovaCare agreements, we find that minimum contacts with Pennsylvania are not present. The contracts were for services to be rendered in Florida. NovaCare and Beverly designated under their contract that they should be contacted only through their Florida offices.

Plaintiff has attempted to portray this case as mirroring Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985), where personal jurisdiction was found through a contract with an out-of-state defendant, even though he never physically entered the forum state. The contractual relationship between the parties in Burger King, however, is distinguishable from the case here. There, the defendant's operations were supervised through the plaintiff's headquarter offices in the forum state. Id. at 480-81. The defendant also bypassed the local office, and directly communicated with the forum state's office when resolving disputes. Id. Lastly, the contract explicitly provided that it would be governed by the laws of the forum state and that such contract would be deemed to have been constructed in the forum state. Though a contract exists in the present case, the surrounding facts that the Burger King court found which supported the exercise of jurisdiction are not present here. Id. at 481. See Rodale Press, Inc. v. Submatic Irrigation Sys., 651 F. Supp. 208, 211 (E.D. Pa. 1986).

CONCLUSION

Plaintiff NovaCare, a Pennsylvania corporation, entered into agreements with Beverly which were to be executed in Florida and were to be controlled by Florida law. The Beverly-NovaCare agreements were entered into by the parties through their Florida offices. Defendants, successor corporations RCA and Capital, have no other contacts with the forum under this dispute aside from contracting with a resident corporation and the sending of a few payments to Pennsylvania. For these reasons, this court will not exercise personal jurisdiction over defendants in this matter.

However, this court will exercise its discretion under 28 U.S.C. §1631 and transfer the case to the Northern District of Florida pursuant to the alternative requests of both parties.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NOVACARE, INC.,	:	CIVIL ACTION
	:	
v.	:	
	:	
RETIREMENT CARE ASSOCIATES, INC.; and CAPITAL CARE MANAGEMENT COMPANY, INC.,	:	No. 97-1211

ORDER

AND NOW, this ____ day of October, 1997, upon consideration of Defendants' Motion To Dismiss or Otherwise Transfer for Lack of Personal Jurisdiction, and Plaintiffs' response thereto, it is hereby ORDERED that Defendants' Motion is GRANTED in part and that the above-captioned matter be transferred to the Northern District of Florida.

BY THE COURT:

_____
JAMES T. GILES, J.

Copies by FAX on _____
to: